

C.Mohan Reddy. Vs. Ottra Ramesh.

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Court : Andhra Pradesh

Decided On : Feb-26-2013

Judge : L.Narasimha Reddy

Appellant : C.Mohan Reddy.

Respondent : Ottra Ramesh.

Advocate for Def. : Sri. P.Govind Reddy Counsel, Sri. A.Chandraiah Naidu

Advocate for Pet/Ap. : Sri. P.Govind Reddy

Judgement :

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY Second Appeal No.468 o

26. 02.2013 C.Mohan Reddy.

Ottra Ramesh.

Counsel for the appellant: Sri P.Govind Reddy Counsel for respondent: Sri A.Chandraiah Naidu HEAD NOTE: ?Cases referred:

1. 2009(3) SCJ 4

JUDGMENT

: This second appeal is filed against the concurrent judgments rendered by the Court of Senior Civil Judge, Tirupati in O.S.No.393 of 2007 and the Court of VI

Additional District Judge (Fast Track Court), Tirupati in A.S.No.92 of 2009.

The respondent herein filed the suit against the appellant herein, for recovery of a sum of Rs.3,00,000/- on the basis of three separate promissory notes.

He pleaded that the appellant approached him with a request to lend a sum of Rs.3,00,000/-, promising to repay the amount in instalments of Rs.1,00,000/- each and accordingly, the amount was lent under three promissory notes.

He pleaded that in spite of repeated demands, the appellant did not pay the amount.

In the written statement, the appellant denied the borrowing of the amount and execution of promissory notes.

He stated that the suit was instituted at the instance of one Mr.Ramakrishna, Inspector of Excise, on account of the differences between both of them.

He has also pleaded that the promissory notes were fabricated.

The trial Court decreed the suit and the appeal preferred by the appellant was dismissed.

Hence, this second appeal.

Sri P.Govind Reddy, learned counsel for the appellant submits that the trial Court and the lower appellate Court have deviated from the settled principles of law, in granting the relief to the respondent.

He submits that as P.W.1, the respondent was not even able to recognize the appellant and such a serious flaw in his evidence was just ignored by the Courts below.

He submits that while P.W.2, one of the witnesses to the promissory notes, was none other than the driver of the respondent, P.W.3 clearly mentioned that he does not know P.W.2.

Learned counsel submits that the appellant was a licensee to run an excise shop and P.W.3, Inspector of Excise, who had differences with him, had managed to get the suit filed.

He submits that the fact that being an income tax assessee, the respondent did not show the amount covered by the promissory notes, in the returns, was not taken into account, by the Courts below.

Sri A.Chandraiah Naidu, learned counsel for the respondent, on the other hand, submits that the mere failure on the part of the respondent to identify the appellant, cannot be treated as fatal to the suit.

He submits that the acquaintance between the appellant and the respondent was minimal and it was P.W.3, who introduced the appellant to the respondent.

Learned counsel further submits that the trial Court and the lower appellate Court have examined the matter in detail and arrived at a just and proper conclusion.

He submits that the concurrent findings recorded by the Courts below do not warrant interference.

According to him, a promissory note being negotiable instrument, presumption provided for under Section 118 of the Negotiable Instruments Act (for short 'the Act') deserves to be drawn.

He places reliance upon a judgment of the Hon'ble Supreme Court in Narayan Rajendran vs.

Lekshmy Sarojini¹.

The suit was filed on the basis of three promissory notes.

The plea of the appellant was, the one of total denial.

The trial Court framed two issues for its consideration:

- 1.

whether the suit promissory notes are true and executed by the defendant? 2.

whether the plaintiff is entitled to the suit amount as prayed? To prove his case, the appellant deposed as P.W.1 and two other witnesses were examined as P.Ws.2 and 3.

He filed Exs.A.1 to A.3, promissory notes, Ex.4, legal notice and Ex.A.5, postal acknowledgment.

The respondent deposed as D.W.1 and no other evidence was adduced by him.

The suit was decreed.

In A.S.No.92 of 2009, the lower appellate Court framed only one point for its consideration viz., Whether the trial Court committed any error in decreeing the suit? The point was answered against the appellant.

The scope of interference in a second appeal, that too with the concurrent findings recorded at by the trial Court and the lower appellate Court is very limited.

It is only when substantial question of law arises for consideration, that the High Court can interfere in the second appeal.

The judgment cited by the learned counsel for respondent provides guidance in this regard.

In a suit filed for recovery of money on the strength of promissory note, what becomes necessary, is proof thereof.

Once the execution of promissory note is proved, the question as to whether it is supported by consideration or not, becomes secondary.

The reason is that Section 118 of the Act provides for such a presumption.

Therefore, the entire controversy in the instant case turns around the question as to whether the promissory notes, marked as Exs.A.1 to A.3, are proved.

On his part, the appellant flatly denied the execution.

As a matter of fact, he filed an application under Section 45 of the Evidence Act before the trial Court with a request to send the documents for the opinion of expert.

The respondent opposed the same and trial Court dismissed the application.

The burden to prove the documents is squarely upon the respondent.

The evidence of P.W.1, though self-serving, assumes much significance in this case.

The minimum that is expected from a person, who is said to have lent a fairly good sum of Rs.300,000/- is that he knows the person who borrowed the amount.

In the affidavit filed in lieu of chief-examination, the respondent as P.W.1 has just reiterated the contents of the plaint.

In the cross-examination, to a specific question as to whether he can identify the appellant, his answer was "I can identify the defendant.

He is in the Court." However, the Court found that the respondent identified the person, by name Mohan Murali sitting in the Court and observed that "Witness identified a person, who stated his name as Mohan Murali sitting in the Court as defendant".

Obviously as an attempt to cover up the lapse, the respondent stated that he has seen the appellant two years back.

He has also stated that he has no personal knowledge about the defendant's economic status and that he cannot say the denomination of the stamps affixed on the suit promissory notes.

To another specific question as to whether he has shown the amount said to have been lent by him to the respondent in the income tax returns, the respondent answered in the negative.

A suggestion was put to him to the effect that the signatures on Exs.P.1 to P.3 are forged.

It was elicited that he does not know the location or number of the house of the appellant.

P.W.2 figured as a witness on Exs.A.1 to A.3.

He is the driver of the respondent.

P.W.3 is said to be a person, who introduced the appellant to the respondent.

He stated that he knows the appellant and the respondent, but he does not know P.W.2.

Though P.W.1 was silent as to the timing of the execution of the promissory notes, P.Ws.2 and 3 stated that it was at 9:00 a.m.

P.W.1 did not state as to who scribed the promissory notes.

P.W.3 stated that the appellant brought the scribed promissory notes.

A suggestion was put to him that there existed a dispute between the appellant, an excise licensee, and himself, an excise sub-inspector, in the context of issuance of licence and that because of those differences, he got the suit filed.

The proof of a document is a mixed question of fact and law.

While the purport of evidence is a matter of fact, appreciation thereof is the one of law.

It is the combination of both, that gives rise to a finding.

As observed earlier, the financial transaction is an important activity and unless a person, who is in a position to lend money, knows another and is sure about his capacity to repay, it is difficult to expect that he would lend money to an unknown person.

Beyond any pale of doubt, P.W.1 proved that he cannot identify the appellant nor does he know about his financial capacity.

Though he has pleaded ignorance about the address of the appellant, that may not be of much consequence.

Coupled with the failure of the respondent to state the basic facts, the admission of P.W.3 as to his ignorance about P.W.2, and the proximity of P.W.2 with his master, the respondent herein, the inescapable conclusion would be that Exs.P.1 to P.3 were not proved at all.

When the crucial and important facts referred to above were pleaded by the appellant, they were brushed aside by the trial Court, by observing that the order refusing to send the documents for expert's opinion was not challenged nor any review petition was filed and that the failure of the respondent to identify the appellant in the Court was not of much consequence.

Almost similar view was expressed by the lower appellate Court.

This Court is of the view that a serious flaw has crept into the judgments of the trial Court and the lower appellate Court and the following substantial questions of law arise for consideration in this second appeal: (i) Whether the plaintiff in a suit for recovery of money on the basis of a promissory note can be said to have proved the transaction, if he states that he can identify the borrower, but identifies a totally different person; and (ii) Whether the plea of a person, who is an assessee of income tax, as to lending of money can be accepted, if he admits that he did not show the amount said to have been lent by him, in his income tax returns.

The discussion undertaken in the previous paragraphs would yield an answer in the negative, to both the substantial questions of law.

Accordingly, the second appeal is allowed and the decree and judgment passed by the trial Court and affirmed by the lower appellate Court are set aside.

The miscellaneous petition filed in this second appeal shall also stand disposed of.

There shall be no order as to costs.

_____ L.NARASIMHA REDDY, J Date:

26. 02.2013

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